

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

DEANNA L. FREITAG,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS, et al.,

Defendants.

NO. C00-2278 TEH

ORDER DENYING
PLAINTIFF'S REQUEST FOR
ORDER OF PAYMENT OF
FUNDS FROM SPECIAL
DEPOSIT FUND

In conjunction with the parties' jointly filed July 16, 2007 status statement, Plaintiff Deanna Freitag filed a proposed order of payment from the special deposit fund created as a result of this Court's December 4, 2003 Order Granting Stay of Execution of Judgment Without Supersedeas Bond. Pursuant to the December 4, 2003 order, Defendants placed \$1,700,000 in a special deposit fund pending Defendants' appeal of the jury's verdict and this Court's grant of injunctive relief. The order provided that:

If Defendants are successful on appeal, then the restrictions on Defendants' ability to spend the \$1,700,000 set aside in accordance with this order shall be dissolved once the [United States Court of Appeals for the] Ninth Circuit issues its mandate. If, on the other hand, Defendants are unsuccessful on appeal, then they shall pay the required funds to Plaintiff within thirty days, without any further action required by Plaintiff or her counsel.

Dec. 4, 2003 Order at 5. The parties now dispute whether Defendants were "successful" or "unsuccessful" on appeal within the meaning of the Court's order.

The Ninth Circuit issued its decision affirming in part, reversing in part, and remanding in part this Court's post-trial rulings on September 13, 2006, and made minor amendments to that decision on November 3, 2006. *Freitag v. Ayers*, 468 F.3d 528 (9th Cir. 2006), *cert. denied*, 127 S. Ct. 918 (2007). The appellate court affirmed the jury's verdict on Freitag's Title VII claims and also affirmed this Court's grant of injunctive relief. The court

1 reversed the First Amendment retaliation judgment against Defendant Lopez based on
2 insufficiency of the evidence, and it remanded the remaining First Amendment retaliation
3 claims, as well as the damages and attorneys' fees awards as necessary, to this Court for
4 further consideration in light of *Garcetti v. Ceballos*, 126 S. Ct. 1951 (2006). On June 6,
5 2007, this Court found for Plaintiff on all remanded issues, and Defendants filed a timely
6 appeal on June 28, 2007.

7 As long as Defendants' appeal remains pending, Defendants cannot be said to have
8 been unsuccessful on appeal. If this Court's June 6, 2007 order is reversed, then the
9 monetary damages or amount of attorneys' fees awarded to Plaintiff may ultimately be
10 reduced. The reasoning in this Court's December 4, 2003 order therefore continues to apply,
11 and the Court thus finds good cause to DENY Plaintiff's request for an order that \$1,006,500
12 be immediately paid to Plaintiff and her attorneys out of the special deposit fund.

13 The Court notes, however, that Defendants have already paid Plaintiff's counsel
14 \$593,500 out of the special deposit fund pursuant to a stipulation reached by the parties and
15 ordered by the Court on April 25, 2007. By denying Plaintiff's request for an order of
16 payment, the Court does not preclude any future similar stipulations for payment while
17 Defendants' latest appeal remains pending.

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19 **IT IS SO ORDERED.**

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21 Dated: 07/20/07



22 THELTON E. HENDERSON, JUDGE
23 UNITED STATES DISTRICT COURT
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